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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,542	10/31/2003	Jonathan Qiang Li	10020618-1	3040

7590 03/08/2006

AGILENT TECHNOLOGIES, INC.
Legal Department, DL429
Intellectual Property Administration
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EXAMINER

COUGHLAN, PETER D

ART UNIT	PAPER NUMBER
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2129

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/699,542

Applicant(s)

LI ET AL.

Examiner

Peter Coughlan

Art Unit

2129

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

1. Claims 1-7 are pending in this application.

Claim Rejections - 35 USC § 101

2. Claims 1-7 are rejected under 35 U.S.C. 101 for nonstatutory subject matter. The claimed invention as a whole must accomplish a practical application. That is it must produce a "useful, concrete and tangible result." State Street, 149 F.3d at 1373-74, 47 USPQ2d at 1601-02. The final step after finding a design solution is missing. There needs to be a purpose for using a tester that is selected.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 6, 7 are rejected under 35 U.S.C. 102(e) (hereinafter referred to as **Ewing**) being clearly anticipated by Ewing, U.S. Patent Publication 20030167135.

Claims 1 and 6.

Ewing anticipates selecting one or more design alternatives (**Ewing**, ¶0052; 'Design alternatives' of applicant is equivalent to 'descriptor' of Ewing.), constructing a classifier for each alternative using sample data (**Ewing**, ¶0052; 'Constructing a classifier' of applicant is equivalent to 'mathematical expression' of Ewing.), construction Operating Characteristics curves for each classifier (**Ewing**, ¶0021; 'Operating Characteristics curve' of applicant is equivalent to 'model' of Ewing.), and selecting a design alternative based on the Operating Characteristic curves. (**Ewing**, ¶0021; 'Selecting' of applicant is achieved by 'process converges to a model...' of Ewing.)

Claims 2 and 7.

Ewing anticipates weighting each Operating Characteristics curve using cost constraints to form a result (**Ewing**, ¶0072, ¶0073 and ¶0115; 'Result' of applicant is equivalent to 'weighted average values' of Ewing.), and selecting the Operating Characteristics curve with the minimal result. (**Ewing**, ¶0021; 'Selecting' of applicant is achieved by 'process converges to a model based on a minimum set of descriptor identified as significant for the model' of Ewing.)

Claim 3.

Ewing anticipates classifiers for each alternative are constructed from sample data gathered through data acquisition. (**Ewing**, ¶0050; 'Sample data' of applicant is equivalent to 'training set' of Ewing.)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(e) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ewing in view of Kondo et al (U. S. Patent Publication 20030167135, referred to as **Ewing**; U. S. Patent 4181715, referred to as **Kondo**).

Claim 4.

Ewing does not teach data acquisition uses a factorial design when more than one alternative is present.

Kondo teaches data acquisition uses a factorial design when more than one alternative is present. (**Kondo**, C9:12-26) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of Ewing by implementing a standard statistical method of factorial design as taught by

Kondo to have data acquisition process that incorporates a factorial design when more than one alternative is present.

For the purpose of illustrating interactions between design alternatives properly.

Claim 5.

Ewing does not teach data acquisition uses a one-way layout when only one alternative is present. (**Kondo**, C9:12-26)

Knodo teaches data acquisition uses a one-way layout when only one alternative is present. (**Kondo**, C9:12-26) It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of Ewing by implementing a standard statistical method of one way layout as taught by Kondo to have data acquisition process that incorporates a one-way layout when only one alternative is present.

For the purpose of using an algorithm that uses only two designs (one of which is an alternative).

Conclusion

5. The prior art of record and not relied upon is considered pertinent to the applicant's disclosure.

U. S. Patent Publication 20020161470: Kusuzono

U. S. Patent 6345108: Faraj

U. S. Patent 5860917: Comanor

U. S. Patent Publication 20020126621: Johnson

U. S. Patent 6907468: Moberg

U. S. Patent 6601106: Moberg

U. S. Patent Publication 20010037324: Agrawal

6. Claims 1-7 are rejected.

Correspondence Information

7. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner Peter Coughlan, whose telephone number is (571) 272-5990. The Examiner can be reached on Monday through Friday from 7:15 a.m. to 3:45 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor David Vincent can be reached at (571) 272-3687. Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,
Washington, D. C. 20231;

Hand delivered to:

Receptionist,
Customer Service Window,
Randolph Building,

401 Dulany Street,

Alexandria, Virginia 22313,

(located on the first floor of the south side of the Randolph Building);

or faxed to:

(571) 273-8300 (for formal communications intended for entry.)

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Peter Coughlan

2/21/2006



DAVID VINCENT
SUPERVISORY PATENT EXAMINER